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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 20th January 1953

S.R.O. 163.—WHEREAS the election of Shri Brish Bhan and Shri Pritam Singh as members of the Legislative Assembly of the State of Patiala and East Punjab States Union from the Lehra Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Niranjan Singh, son of Shri Nika Singh, Village Dirbha, District Sangrur;

AND WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has, in pursuance of provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarwate—*Chairman.*Raghunandan Saran—*Member.*E. M. Joshi—*Member.*

ELECTION PETITION No. 104 OF 1952.

Niranjan Singh s/o Nika Singh, village Dirbha, District Sangrur, Elector No. 401 in the electoral roll V, Dirbha (A) Village Dirbha, Patwar Dirbha, Thana Dirbha, Lehra Constituency—*Petitioner.*

Versus

1. Brish Bhan, s/o Nand Lal, Deputy Chief Minister (now Home Minister), Baradari Gardens, Patiala.
2. Pritam Singh s/o Talsa Singh, Sahuk, village, District Sangrur.
3. Pritam Singh s/o Kishan Singh, resident of Gujran, P.O. Gujran, District Sangrur, C/o Darshan Press, Sangrur.
4. Naranjan Singh s/o Dayal Singh, village Ubha, Post Office Dirbha, District Sangrur.
5. Naranjan Singh s/o Kaur Singh, village and Post Office Bhutal Kalan, Tehsil Sunam, District Sangrur.
6. Ghuman s/o Pala, village Ugrahan, Post Office Sunam, District Sangrur.
7. Yogeshwar s/o Narayan Datta, Manager, Bharat Cinema, Jind, Sangrur District.
8. Jawahar Singh s/o Bela Municipal Commissioner, House No. 619, Patiala Gate, Sangrur.

9. Bhajan Lal, s/o Jawahara, President, Depressed League, Post Office Samana, District Patiala.
10. Jahangir Singh s/o Nika Singh, snop-keeper, Near Railway Station Lehra, P.O. Lehra Gaga, Sangrur District
11. Jagan Nath s/o Radha Ram, village Dirbha, Post Office, Dirbha.
12. Norata Ram s/o Umra, House No. 186, Balmik Nagar, Sunam.
13. Prem Singh s/o Jaswant Singh, village Dharam Garh, Post Office Sunam, District Sangrur.
14. Harnam Singh s/o Partap Singh, V. Dharam Garh, P.O. Sunam, District Sangrur—*Respondents*.

ORDER DELIVERED ON 16TH JANUARY 1953

This election petition is by an elector who seeks a declaration that the election to the Lehra Constituency of the PEPSU Legislative Assembly is wholly void. This is a double member constituency with one seat reserved for the scheduled castes. All the 14 respondents to the petition had filed their nomination papers but the Returning Officer rejected the nominations of respondents 12, 13 and 14. The nominations of respondents 1 to 11 were accepted and they contested the election. In the result the respondent No. 2 Pritam Singh was declared elected in the reserved seat and respondent No. 1 Brish Bhan in the general seat.

2. The petitioner calls the election in question on the ground of improper rejection of the nomination of respondent No. 14 Harnam Singh and of improper acceptance of the nomination of the respondent No. 1 Brish Bhan. At the scrutiny of the nominations the respondent No. 14 who belongs to Communist Party was not himself present. To his nomination objection is stated to have been taken by a C.I.D. Officer that the papers were not signed by Harnam Singh himself. The Returning Officer accepted this objection and rejected Harnam's nomination. The acceptance of the respondent No. 1 Brish Bhan's nomination is alleged to be improper because it is said that he had not made a deposit of the security amount in respect of this Lehra Constituency and had not filed any receipt with the nomination paper about such deposit. The petitioner also refers to an irregularity of procedure with respect to the taking of a repoll at the Banarsi Polling Station—the alleged irregularity being that notice of the repoll was not given to one contesting candidate respondent No. 7 Yogeshwar.

3. Only the respondents 1, 3 and 14 have entered appearance and filed their written statements. The respondent No. 1 controverted the petitioner's allegations while the respondent No. 3 supported them and in addition made an allegation in para. 12 that respondent No. 1 had interfered with the free exercise of the electoral right of Yogeshwar respondent No. 7 by inducing him not to oppose respondent No. 1 and practically to withdraw from the contest. On behalf of respondent No. 14 a written statement was first filed in which the petitioner's allegation that the election had been materially affected by the improper rejection of his nomination was controverted. This was however withdrawn by the respondent No. 14 before the trial and substituted by another statement in which he fully supported the allegations of the petitioner about the improper rejection of his nomination and contended that the rejection had very materially affected the result of the election.

4. The issues on which the parties went to trial were the following:—

- (1) Whether Respondent No. 3 can be allowed to plead corrupt practice on the part of the Respondent No. 1 as alleged in Para. 12 of his written statement when the petitioner has not made that a ground of attack in his petition?
- (2)(a) Was the C.I.D. Inspector, Sangrur, present at the time of scrutiny of nominations and was the scrutiny of nomination of Respondent No. 14 adjourned by the Returning Officer to 3rd December 1951 on the objection of the C.I.D. Officer?
- (b) On what ground was the nomination of Harnam Singh rejected and was that rejection improper?
- (c) Has the rejection of the nomination of Harnam Singh materially affected the result of the election?
- (3)(a) Did respondent No. 1 Shri Brish Bhan not deposit the requisite security amount in respect of the Lehra Constituency within time and did the Returning Officer treat his deposit in respect of Sangrur Constituency as a deposit for Lehra and accept his nomination as being in order?

- (b) Was the acceptance of the nomination of Respondent No. 1 improper?
- (4)(a) Was service of notice regarding repolling in Banarsi Polling Station on Respondent Yogeshwar personally necessary according to rules?
- (b) Was the repoll not done according to law?
- (c) Has the irregularity if established not materially affected the result of the election?
- (5) Does the petitioner make out a case for declaration of the election as wholly void in respect of general seat or reserved seat or both?
- (6) What is the appropriate order to be made in this case under sections 93 and 99 of the Representation of the People Act, 1951?

5. *Issue 1.*—The plea taken in para. 12 of his written statement by the respondent No. 3 sought to make a case of the commission of the corrupt practice of bribery and undue influence and was based upon a letter purporting to have been sent by Col. Raghubir Singh, Leader of the Congress Assembly Party to the father of Respondent No. 7 Yogeshwar. We have not however allowed it to be proved because in our view it is not open to any respondent to seek to avoid an election upon a ground not taken by the petitioner in the election petition. This would seem to follow clearly from the language of Sections 80 and 83 of the Representation of the People Act 1951. If the respondent No. 3 desired such ground to be considered for avoiding the election, he should have required the petitioner to include a statement of its facts in his petition before its presentation or should have himself made an Election Petition based upon such ground. In the absence of any such step, we find that the plea cannot be availed of in this case.

Issue No. 2.—Two nomination papers (Exhibit P-1 and P-2) were presented on behalf of the Respondent No. 14 Baba Harnam Singh. The 1st nomination paper was subscribed by Raunak Ram and Kesho Ram as proposer and seconder. In the second the proposer and seconder were Arjan Singh and Sadhu Ram. The Returning Officer rejected both these holding that the signature of the candidate on either of them was not proved to be genuine. The date fixed for scrutiny of the nomination paper was 1st December 1951. On that day the candidate himself was not present before the Returning Officer and only his proposers were present along with a counsel. Baba Harnam Singh candidate belonged to the Lal Communist Party and had been at that time and for some years previously a fugitive from law. He has been described as being under ground then. There is no suggestion on behalf of the respondents that because he was in hiding to avoid his arrest under a warrant at the hands of the police he could not have been available to his party men to give his signatures on the nomination papers. It is significant that no objection was raised at the time of scrutiny on behalf of any candidate that the signatures on the nomination papers could not be genuine because Harnam Singh could not have been available to make them. The Returning Officer has stated that on his own motion he required proof of genuineness of the signatures because on the face of them they appeared to him suspicious. S. 38(2) of the Representation of the People Act no doubt gives him power to call for such proof on his own motion but we fail to see how the signatures could have on the face of them aroused his suspicion. We are not, however, without a definite indication as to the real source of his suspicion. It was a suggestion thrown by an officer of the Criminal Intelligence Department, Inspector Om Parkash, who attended at the time of scrutiny. The knowledge that a police officer was allowed to be present at the time of scrutiny seems to have been responsible for the advice given to Harnam Singh to avoid being personally present but the Returning Officer not only failed to appreciate the real reason of Harnam Singh's non-attendance but allowed this circumstance to adversely influence his mind and to strengthen the suspicion already aroused by the C.I.D. Officer's suggestion. We mention all this not because we think that mere presence of a police officer at the place of scrutiny would be objectionable in law but because we feel that were it not for that officer's suggestion which he had no right to make, the Returning Officer may not have started looking at these nomination papers with a definitely biased mind as he did. Having started with such prepossessed mind, though he adjourned the scrutiny to 3rd December 1951 to allow the proposers of the nomination paper an opportunity to produce evidence, he looked askance at every item of proof and eventually found against the genuineness of signatures on both the papers and rejected them.

7. Before us the petitioner produced evidence to prove the candidate's signatures on these nomination papers. Having given the matter our best consideration we feel satisfied that the signatures are genuine and there can be no escape from the conclusion that the rejection of the nomination of the Respondent No. 14 was not proper. We have before us the sworn testimony of the Respondent No. 14 himself

that the signatures purporting to be his on the two nomination papers are in his own handwriting and were actually made by him and we see no good reason to disbelieve him. He explains that though gone under ground, he was in his own village where the nomination papers were brought to him and his signatures obtained on them. The mere fact that he has admitted some other person's writings shown to him to be his own signatures though really not his, does not detract much from the value of his testimony that the signatures on the nomination papers were made by himself. He is an old man of about 80 years and has got impaired vision and as such he was liable to make mistakes in distinguishing the writing of his name by another from his signatures. His memory however appears to be good and we find no reason why he should not be believed on his statement that he actually signed the two nomination papers. His proposer Ranak Singh too has sworn that he took the two nomination papers to Baba Harnam Singh and obtained his signatures on them. We can see no reason to discredit his evidence when there is nothing on the other side to suggest any thing to the contrary. We have also the testimony of Sr. Narain Datt P.W. 3 who is a senior legal practitioner of Sangrur and had appeared as a pleader for Baba Harnam Singh in several cases. He says that Harnam Singh used to sign *Vakalatnamas* and from one acquaintance thus gained of his signatures he is able to identify the signatures of Baba Harnam Singh on the two nomination papers as being in the hand-writing of Harnam Singh himself. Narain Datt is a Congress man of some standing and though now he has got his differences with some Congress men including Brish Bhan Respondent No. 1, we do not think it a sufficient reason to cast aside his sworn testimony on this point as unworthy of credit. He gave the same evidence before the Returning Officer when such differences had not arisen.

8. Against this there is no evidence at all on behalf of the Respondent No. 1 that the signatures purporting to be of the Respondent No. 14 on the two nomination papers are really not his. Brish Bhan, as a lawyer had represented Harnam Singh in several cases and knew that he could sign his name. We have already remarked that he did not take any objection before the Returning Officer, nor does he affirm here that Harnam Singh could not write and had not signed the papers. It may be that Harnam Singh sometimes chose to make his thumb mark only on some documents in token of his signature but there is no doubt also that he was able to sign his name and often times did sign documents in his own writing. This being so, nothing could have been easier for the respondent No. 1 than to show by a comparison of the admitted signatures of Harnam Singh that those on the nomination papers were not genuine. For such comparison the undisputed signature of Harnam Singh in the presence of respondent No. 1's witnesses Boota Singh and Harnam Singh (Head Constable) was here available on the first written statement filed on behalf of Harnam Singh before us. On the direct evidence of Harnam Singh and Ranak Singh in which no attempt has been made on the other side to rebut, we find that the signatures of Harnam Singh on the two nomination papers are genuine and the Returning Officer had improperly rejected them.

9. The argument on behalf of the Respondent No. 1 was that the scope of enquiry before the Tribunal in such cases was rather a limited one. That under S. 38 of the Representation of the People Act the Returning Officer had quasi-judicial powers of making inquiry into the fact of genuineness of candidate's signatures *suo moto* and to refuse a nomination on the ground of the signature not being genuine. That S. 100(1)(c) of the Act in laying down that:—

If the Tribunal is of opinion

- (a)
- (b)

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the tribunal shall declare the election to be wholly void;

lays stress upon the Tribunal's power to inquire independently how the election had in fact been affected by the rejection or acceptance of the nomination while the Tribunal is required only incidentally to consider whether on the evidence produced before him the Returning Officer acted judicially or arbitrarily in accepting or rejecting the nomination. In this respect it was urged that the jurisdiction of the Tribunal was in the nature of appellate or revisional jurisdiction and the Tribunal has not ordinarily to allow other evidence to be canvassed before it but only to consider whether on the evidence that was produced before him, he was justified or not in reaching the conclusion that he did. We can see nothing in the words of the section to preclude us from considering all the evidence which may have been produced at the trial before us.

10. An argument as to the limited scope of Election Tribunal's jurisdiction based upon the same words occurring in the Corrupt Practices Order had been considered by an Election Tribunal in Moradabad District N. W. Muhammadan Rural Constituency Case of 1937 (Bashir Ahmed V. M. Akhtar Hussain Khan, Sen and Poddar's Indian Election Cases 1951 at pages 564) and was repelled by the learned Commissioners in the following words:—

"The commissioners have full power to go behind the decision of the Returning Officer and to decide for themselves whether the candidate was qualified to stand or not. . . . In other words the decisions given by the Returning Officer are by no means final as far as the Election Tribunal is concerned. Rules 4(7) and 4(8) of the same Rules (Conduct of Election Rules) show that the Returning Officer's enquiry is of a summary nature, the scope of which is limited according to his own discretion. He must complete an enquiry within 50 hours of filing of nominations. Such being the case to give the Returning Officer's decisions finality in any respect as far as the Election Commissioners are concerned, is, in our opinion, quite against the spirit of the rules governing the trial of election petitions".

11. Similar provisions regarding procedure of the Returning officer are to be found in S. 38 of the present Act. He is to hold a summary inquiry and in his discretion to allow time of not more than 48 hours to rebut the objection. The above reasoning of the learned Commissioners with which we find ourselves in complete agreement, would apply with equal force to the present case also. It is true that in the Moradabad case the argument was that all that the Tribunal could examine in considering the rejection or acceptance of nomination was whether the Returning Officer had followed correct procedure in the inquiry and if his procedure was correct then his decision must be accepted as proper and binding by the Tribunal. In the present case the counsel for the Respondent No. 1 was more liberal in conceding to us a kind of appellate or revisional jurisdiction on the merits of the Returning Officer's decision as well. In the opinion of the Commissioners however as would appear from the above passage, the Tribunal's jurisdiction was not liable to be limited to even a small extent, but would be unfettered in the matter of enquiry irrespective of what decision the Returning Officer had reached and in what manner.

12. But even if the scope of the enquiry before us were limited in the manner contended by the Respondent No. 1's counsel, we would have no difficulty in coming to the conclusion that on the evidence produced before him, the decision of the Returning Officer against the genuineness of the signatures could not at all be considered judicious. We have already shown how he embarked on the scrutiny with a strong assumption against the genuineness of the signatures. The candidate's presence before him was not necessary according to rules. Harnam Singh's absence was sought to be explained by his supporters by stating that he had pain in his knees. This was not true and could not be supported by medical evidence. The Returning Officer required the absence to be explained and as the real reason could not be disclosed, this faked explanation was offered. The candidate's non-attendance was immaterial if there was other adequate evidence offered to prove the signatures. But instead of appreciating that personal attendance of the candidate was not only not necessary but had been rendered impracticable by his own act of allowing the C.I.D. Officer to be present, the Returning Officer used that circumstance to draw an adverse inference against the candidate and to discard the other evidence as worthless. He observed,

"The very fact that he is being withheld (in the absence of any satisfactory explanation) raises a strong suspicion against him and renders the alternate and indirect evidence comparatively valueless".

13. The evidence produced before him was all direct. It was oral evidence of Ronak Singh the proposer in Ex. P.1 that the signatures on that paper were made in his immediate presence and of an affidavit sworn to the same effect in respect of the signatures on Ex. P.2 by Arjan Singh who had subscribed as proposer to that paper. Pt. Narain Dutt gave his evidence based on the familiarity with Harnam Singh's writings that the signatures on the two papers appeared to be in Harnam Singh's writing. The reason for disbelieving Ronak Singh was that through inadvertence he stated in his evidence that he was a seconder to the nomination though in fact he had subscribed as proposer. Arjan Singh's affidavit was discarded because he erred in stating the name of the person who had subscribed as seconder to that nomination and because due to his weak eye-sight he had identified another man's signature on one of the papers as that of Harnam Singh. These slips could not be sufficient to discredit the direct evidence of these persons that the signatures appearing on the nomination papers were made by Harnam Singh himself in their immediate presence.

14. The Returning Officer while willing to concede that the type of evidence given by Pt. Narain Dutt was relevant and admissible in law, did not consider it worthy of credence. He characterised it as 'of a general and vague nature' because Narain Dutt did not have in his possession "any letter, *Vakalatnama* or other document that may have been signed by the candidate in his presence in the course of his alleged dealings with the candidate". The *vakalatnamas* signed by Harnam Singh would be in the records of the courts and not in possession of the pleader. The witness did not claim that he had been in correspondence with Harnam Singh and if Harnam Singh did write any letters, they would not stand the test of adequacy prescribed by the Returning Officer because normally the letters are not written in the presence of the person to whom they are addressed.

15. We think that these are not adequate reasons to brush aside the evidence and were it not for the suspicious back ground against which the Returning Officer started looking at it, he should have felt convinced by it. He even assumed the role of hand writing expert and opined on his own examination apparently unaided by instruments or enlarged photographs that the signatures of the candidate at different places on the nomination papers were not the writings of the same person,

"Each of the signatures of the candidate occurring at three or four places differs from the other, and they do not appear to be signed by one and the same person on the face of it. The characters, pen pressure and flow of writing occurring in each of these signatures in different."

He did not pause to consider before hazarding this opinion why if any body was really concerned to obtain forged signatures of Harnam Singh he should have chosen to get the signatures written by different persons at the several places on the same paper. If this were a fact then certainly the forgery as remarked by the Returning Officer would be apparent on the face of it. There is no suggestion however from any party that any such clumsy tactics might have been adopted.

16. The pertinent thing to do was to compare the signatures about which there was suspicion with some undisputed signature of Harnam Singh which could be available. As we have said such comparison could be offered before us by the respondent No. 1 in an attempt to rebut the evidence given on the side of the petitioner but it has not been done and in fact the respondent No. 1 did not take courage to say that the signatures on the nomination papers were not genuine. He himself had been pleader for Harnam Singh in several cases and had seen him sign his *vakalatnamas*. Arjan Singh had suggested to the Returning Officer that the proper thing would be to get a *Vakalatnama* in some record of a court which bore signature of Harnam Singh and then with the help of a handwriting expert to institute a comparison of that signature with the signatures on the nomination papers. He even specified a record of a revenue appeal in which he thought that a *Vakalatnama* of Harnam Singh bearing his signature may be available. The Returning Officer seems to have called for that record, and two others, the descriptive titles of which he has mentioned in his order on Ex. P. 2. The result of his examination of these has been stated by him as follows:—

"These files were accordingly caused to be produced before me and the *vakalatnama* therein examined. But all the *vakalatnamas* purporting to be on behalf of Harnam Singh (candidate) are thumb marked by him instead of being signed in Gurmukhi as imagined by the proposer. This circumstance makes the matter all the more suspicious. It reveals that the candidate was rather in the habit of affixing his thumb mark than signing in Gurmukhi. May be that he may not be conversant with the Gurmukhi language at all to be able to sign his name."

17. Here again it was not suggested by any one that Harnam Singh did not know writing enough even to write his name in Gurmukhi and as we have said though he did some times make his thumb mark also in token of his signature, that circumstance alone could not be sufficient to warrant an inference that he could not sign in Gurmukhi. On behalf of the respondent No. 1 no attempt was made to substantiate this part of the Returning Officer's reasoning to induce us to find against genuineness of the candidate's signatures. We were not asked to look into those records. Arjan Singh had perhaps wrong information given to him about presence of Harnam Singh in the appellate court through pleader and therefore requested the Returning Officer to send for the record of the appeal for comparison of hand writing. As we are told by Narain Dutt in his evidence before us this Harnam Singh candidate who is son of Partap Singh had no concern at all with the other two records which the Returning Officer examined. In those cases another man Harnam Singh, son of Santa (this is the description given also

in the title of those records as reproduced in the order of the Returning Officer) was a party whose vakalatnamas must have been seen by the Returning Officer. In the appeal case according to Narain Dutt this candidate Harnam Singh was no doubt a party but he was joined as a *pro forma* respondent because he had not come forward to join with the other appellants in filing the appeal and though named as a respondent he did not enter appearance either in person or by pleader. Therefore there would not have been any vakalatnama of the man in that record also. The above argument of the Returning Officer thus appears to have been the outcome of the pre-conceived prejudice and to be built upon premises merely imaginary.

18 We found it necessary to do this critical examination of the Returning Officer's order, to do justice to the argument strenuously put forward on behalf of the respondent No. 1. The argument was that the Election Tribunals should not be instrumental in unsettling elections which have involved the contesting candidates in so much anxiety, trouble and expense only because they do not find themselves in agreement with the decision of the Returning Officer rejecting a nomination unless they can find that the decision was quite arbitrary and perverse. We think that the Returning Officer in this case clearly allowed the unwarranted suspicion to get the better of his judgment and his decision was nothing short of being perverse. We no doubt feel that it is a great hardship on all concerned if the elections are allowed to take place after improper rejection of a nomination by the Returning Officer without his mistake being rectified there and then, only to be declared void later on by an Election Tribunal thus making the parties to suffer for no fault of theirs. As the Election Law at present stands this is unfortunately the position. It is for the legislature to consider if any change in the law is necessary and what would be the best way of settling such flaws of the improper rejection or acceptance of nominations and of making all nominations final and conclusive before the constituency is required to go to the polls. We can only recommend that it is very desirable to have these questions settled finally before the elections and not leave them to be made grounds of election petitions after going through the elections.

19. On behalf of the petitioner a number of decisions were referred to in support of the proposition that improper rejection of a nomination raises a presumption that the result of the election is affected in a material manner. All the decisions on this topic reported in Sen and Poddar's Indian Election Cases appear to be one way and no case was brought to our notice in which a decision to the contrary effect has been given. In fact the counsel for the respondent conceded that this was the interpretation consistently put on the words of the provision now enacted as section 100(1)(c) of the Representation of the People Act and that the position was so well established that he did not think it proper to argue against it.

20. He has however argued that the presumption that the election is materially affected is rebuttable and has urged that on the evidence given in this case we may find that in fact the election was not materially affected by the improper rejection of Harnam Singh's nomination. The presumption is based on recognition of the two essential considerations both very material in an election, viz. (1) that the improper rejection deprives the rejected candidate of a chance to contest the election and (2) the entire electorate is deprived of a chance to vote for him. How the voting would have gone with Baba Harnam Singh also in the contest can be determined definitely only after fresh election. We cannot have any notion of the mind of the entire electorate upon the opinion of a few witnesses on one side or the other whose statements regarding the better chances of one candidate over another can at best be in the nature of speculation which would not be legal proof of the votes as may be polled actually when an election takes place. Thus in this case we have been told by the witnesses on petitioner's side that Harnam Singh has been a political worker for the last 30 years or more, that his work has been mainly amongst the tenantry with whom he is popular, and that he had passed nearly 15 years of his life in jails suffering such imprisonment for espousing the cause of the common people and that as a nominee of the Lal Communist Party as he was intended to be, the majority of the voters belonging to the poorer class would have supported him and he would have easily swept the polls. That as against him Shri Brish Bhan as a Congress candidate could not have much chance because the people know what his sincerity or suffering in their cause has been like for on two occasions when it came to his arrest and imprisonment he got himself released by offering security and giving undertaking not to take part in political activities.

21. On the other side it is sought to make out that respondent No. 6 Ghuman Singh who was the only candidate of the Lal Communist Party was also a political worker of many years standing though not quite so old as Harnam Singh and the

workers of the Communist Party worked for him in the election with their utmost zeal and might and so even if Baba Harnam Singh had been in the contest, he could not be expected to fare better than Ghuman Singh actually did and thus the result of the election would have remained much the same even with Harnam Singh in the contest.

22. All this we think is not very helpful either for strengthening the presumption arising independently of such consideration, viz, that the election has been materially affected or for rebutting that presumption and enabling us to find that the result of the election would not have been otherwise. What considerations besides those above referred to on one side or the other would have weighed with the voters we do not know and by preferring to rely on, the point of view and the wishful thinking of one side in preference to that of the other, we can only be substituting one anticipatory opinion for the actual verdict of the electorate which can only be known after an election.

23. This element of uncertainty was attempted to be got over by the respondent No. 1 by an allegation that the Lal Communist Party had intended Respondent No. 6 Ghuman Singh to be their first rank nominee and that Harnam Singh's nomination had been made only to have another candidate to stand behind Ghuman Singh or as it has been stated Harnam Singh was only a covering candidate for Ghuman Singh. Thus it is alleged that if Harnam Singh's nomination had also been accepted, he would in fact have withdrawn his candidature and allowed Ghuman Singh alone to contest the election as Lal Communist Party's candidate. This is an attempt to prove that the rejection of Harnam Singh's nomination did not in fact materially affect the election because even if it had been accepted he would have withdrawn and the election would have proceeded just in the same way as it actually did. This allegation was sought to be reinforced by an admission of this position by Harnam Singh himself in para. 12 of the first written statement filed on his behalf on 4th October 1952. At that time Harnam Singh was confined in Sangrur Jail as an under-trial for certain prosecution which was pending against him. He could not therefore be present before the Tribunal and that written statement was filed on his behalf by an Advocate Shri Daya Swarup Nehra. Later when Harnam Singh was released from the jail, he filed an application withdrawing that written statement on the allegation that it did not contain a true statement of facts on this point and had been obtained from him by misrepresentation. He also filed a fresh written statement on 27th October 1952 through another pleader Sardar Hardyal Singh in substitution for the previous one. In this he did not make the admission of his having been a covering candidate but on the contrary alleged that the result of the election had been materially affected by the improper rejection of his nomination.

24. The admission of Harnam Singh in the first written statement having been resiled from in the second loses its evidentiary value but the controversy as to the circumstances in which it was first made and later withdrawn still remains and as those circumstances have a bearing on the determination of the point whether he was really a covering candidate or not, we may briefly consider them first.

25. The first written statement is in English which Harnam Singh does not understand. His signature to it was obtained on 27th September 1952 in Sangrur Jail. For this purpose he was visited in the Jail by two persons Boota Singh and Ajmer Singh. There was also a pleader with them B. Chamela Ram. These persons were allowed to interview the under-trial in the presence of Harnam Singh, Head Constable incharge of the Jail guard. Head Constable Harnam Singh has been examined as witness No. 2 for the respondent and on his evidence we feel satisfied that at the time of taking the under-trial's signatures the contents of the written statement were not explained to Harnam Singh. Chamela Ram was defending Harnam Singh in the criminal case then pending and Harnam Singh had confidence in him. But Chamela Ram also appears to have been Brish Bhan's man. He is Brish Bhan's friend and was his polling agent in the Election. He cannot therefore be disinterested in the result of this Election Petition. Boota Singh who has given evidence as witness No. 3 for the Respondent was in the Lal Communist Party and was as he states Election Convenor of that party. It appears that after the general elections the Lal Communist Party has ceased to exist as a separate entity and has amalgamated with the Communist Party of India. Boota Singh has not gone over to the combined party and is no longer in political life in any position of responsibility as he had been before. His evidence is that it was under his advice that Harnam Singh had agreed to file that written statement and had signed it after being apprised of its contents by Chamela Ram. We do not believe Boota Singh on this latter part of the statement which is contradicted by the Head Constable Harnam Singh.

26. The respondent No. 14 Harnam Singh in his evidence on the side of the petitioner has stated that he had instructed Chamela Ram to prepare a written statement for being filed in the Election case but had never told him that he did not want to contest the election. He also states that he signed the written statement without being told what was in it. We also note that a written statement on behalf of Shri Brish Bhan was presented to the Tribunal on 23rd September 1952 but it was neither signed nor verified by the party and it was returned to the Pleader who presented it for being completed. That written statement has not however been produced again but on 4th October 1952 a newly prepared written statement was filed on behalf of Shri Brish Bhan and on the same day the first written statement of respondent No. 14 obtained by Brish Bhan's friend Chamela Ram was filed on both these contained the one statement in common that Harnam Singh had been merely a covering candidate. We have Brish Bhan's evidence that between 23rd September 1952 and 4th October 1952 he had visited Sangrur on some days and he was perhaps there on 27th September 1952 when Chamela Ram obtained Harnam Singh's signature in jail.

27. Reading between the lines of the conflicting statements and viewing all the circumstances narrated above, we feel that the first written statement filed on behalf of Harnam Singh was inspired by Shri Brish Bhan and that Harnam Singh was in all probability aware that it contained a statement that he was only a covering candidate. We do not however think that Harnam Singh allowed that statement to be made on his behalf because it represented the fact. We are rather inclined to the view that Boota Singh not being in the Communist Party now had promised to support Brish Bhan and he advised Harnam Singh also to help Brish Bhan by making such statement. The party to which Harnam and Boota Singh belonged had ceased to exist and after the elections were over Harnam Singh did not have any party to look to for support. Under Boota Singh's advice he therefore seems to have played into the hands of Brish Bhan and allowed Chamela Ram to obtain from him a written statement helpful to Brish Bhan. But when he was released from jail, the party who is backing up the petitioner has induced Harnam Singh to cross over to them and to withdraw the first written statement on the allegation that it was obtained from him by misrepresentation and without telling him its contents which is not perhaps true.

28. We are not therefore disposed to make much of this change of pleading on Harnam Singh's part and would base our judgment on the point of his having been a covering candidate or otherwise on consideration of the other evidence and circumstances. Harnam Singh himself states that he was intended to be his party's first choice and this is stated by his proposer Ronak Singh P.W.5 also. Ghuman Singh giving evidence as P.W. 4 has also stated that Harnam Singh was really intended by the party to contest the election and he himself was put up as a second man who would have withdrawn in favour of Harnam Singh. The party's election convenor Boota Singh giving evidence for the respondent seems to be unwilling to admit that Harnam Singh was the party's first choice but it is easy to see through his evidence the reason for this unwillingness. He is now trying to be helpful to Brish Bhan and as we have pointed out was instrumental in obtaining Harnam Singh's first written statement in Brish Bhan's favour. But even he found it difficult to say that Ghuman Singh was the party's first choice and has tried to steer a middle course by stating that the party had not made a definite choice between the two candidates and this was left to be decided after the candidates had been duly nominated.

29. We have however two circumstances which seem to clinch the matter and which go to show that Harnam Singh was the real candidate of the party. It appears that for purposes of fighting the elections, there was an attempt of certain political parties outside the Congress circle, to join hands to set up candidates in opposition to the Congress. This alliance was styled 'Peoples Democratic Front' and the committee of representatives of the parties joining it was to select names of the candidates to be adopted from each party. The candidates thus proposed were named in a large printed poster which was issued. A copy of this poster is produced before us and Boota Singh admits it. He has been named in it as the representative of the Lal Communist Party. This poster mentions Harnam Singh's name only as the Party's proposed candidate for election. Confronted with this, Boota Singh found himself in a situation where it was impossible for him to give precedence to Ghuman Singh over Harnam Singh and he tried to make the best of that inconvenient situation by stating that Harnam Singh and Ghuman Singh were both proposed by the party for adoption by the Democratic Front and it was a printer's mistake that Ghuman Singh's name did not appear in the Poster. This explanation is evidently a lie and we cannot act on it.

30. Ghuman Singh's nomination was accepted by the Returning Officer on 1st December 1951 and if he was to be the only candidate on behalf of the Lal Communist Party and Harnam Singh was intended as a covering candidate only there was no point in the party's men including Boota Singh the election convenor, to press for acceptance of Harnam Singh's nomination with all the vehemence as they did on 3rd December 1951. This shows that Harnam Singh was in fact the party's first choice and Ghuman Singh had been put up only as a covering candidate and we find accordingly. We thus find on Issue 2 that the Returning Officer had improperly rejected Harnam Singh's nomination on the ground that his signatures to it were not genuine and that the rejection had materially affected the result of the election.

31. Issue V. With this finding we are bound to declare the election to be wholly void under Section 100(1)(c) of the Representation of the People Act, 1951. This is double member constituency in which according to the method of voting provided in section 83 every elector has two votes and these he can give to any two candidates one vote to each of them irrespective of whether they are both eligible for the general seat or the reserved seat or he may give one to a candidate for the general seat and one to the reserved seat candidate or may choose to cast one vote only and not give the other to any one. Though Baba Harnam Singh was eligible for election in the general seat, it cannot be said to be beyond the bounds of possibility that the voters who gave their one vote to the respondent No. 2, who has been returned in the reserved seat, might have given those votes to Harnam Singh which would have affected the votes polled by Pritam Singh and he may not have been returned. It is possible again that with Harnam Singh in the field, some voters who did not come to the polls at all might have come to vote for him and we cannot say for whom they would give the second vote and how the votes polled by each candidate would have stood. This shows that in a double member constituency the declaration of the election as wholly void must relate to the general as well as the reserved seat irrespective of whether the candidate whose nomination was rejected was eligible for the reserved seat or for the general seat. We find that the election is wholly void in respect of all the candidates.

32. In view of this decision of ours the determination of issues III and IV becomes redundant. We find also that there is no substance in the contentions which are the subject matter of these issues, but do not feel called upon to state our reasons for the same.

33. Issue VI. In the result therefore we make an order under section 98 of the Representation of the People Act, 1951 declaring the election in the Lehra Constituency of the PEPSU Legislative Assembly to be wholly void. As to the order of costs to be made under section 99 we think that since the Returning Officer's order of rejection of Harnam Singh's nomination was not made in pursuance of the objection of any of the respondents, the equitable thing will be to leave the parties to bear their own costs as incurred and we order accordingly.

V. B. SARWATE, *Chairman.*

E. M. JOSHI, *Member.*

RAGHUNANDAN SARAN, *Member.*

Dated the 16th January, 1953.

[No. 19/104/52-Elec.III.]

S.R.O. 164.—WHEREAS the election of Sardar Thakar Singh, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union from the Kapurthala Constituency of the Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sohet Singh son of Sardar Harnam Singh, near Police Lines, Kapurthala City;

AND WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT KAPURTHALA

ELECTION PETITION No. 203 OF 1952

Sohet Singh, son of Sardar Harnam Singh, Near Police Lines, Kapurthala City—*Petitioner.*

Versus

1. Sardar Thakar Singh, son of S. Harnam Singh V. & P.O. Kala Sanghian, Tehsil and District Kapurthala.
2. S. Harcharan Singh, son of S. Bhagat Singh House No. 839/W3 Mohalla Banian Kapurthala City.
3. S. Thakar Singh, son of S. Amar Singh, Village Kassochahal (Jwalapur) P.O. Kapurthala.
4. S. Kartar Singh, son of S. Labh Singh, V. Talwandi Mehman P.S. Sadr. District Kapurthala.
5. S. Harnam Singh, son of Sundar Singh, V. Alamgir P.O. Kala Sanghian District Kapurthala.
6. Shri Milkhi Ram son of Shri Mool Raj, Near Temple Sudan Ward No. 9 Kapurthala City.
7. Shri Amarnath, son of Shri Suraj Bhan, Ward No. 6 House No. 153 Mohalla Sabharwallan Near Shalimar Garden, Kapurthala City.
8. Shri Gowardhan Dass, son of Shri Sallg Ram, V. & P.O. Kala Sanghian District Kapurthala.
9. S. Atma Singh, son of S. Shiv Singh, V. & P.O. Sidhwan District Kapurthala.
10. S. Samund Singh, son of S. Fateh Singh, Village Wadala Kalan, P.O. Kapurthala
11. Shri Shadi Ram, son of Shri Ganduram, House No. W.D.12/824, Shergarh Kapurthala City.
12. Shri Ram Saroop, son of Shri Faqir Chand, V. Lakhana Khurd P.O. & District Kapurthala—Respondents.

Election petition under section 81 of the Representation of the People Act, 1951 calling in question the election of Respondent No. 1 S. Thakar Singh to the PEPSU Legislative Assembly from Kapurthala Constituency.

JUDGMENT

This is an election petition under section 81 of the Representation of the People Act, 1951 (hereinafter to be referred as the Act), by Sardar Sochet Singh petitioner, an elector in the Kapurthala Constituency, for declaration that the election to the Kapurthala Constituency of the Patiala and East Punjab States Union Legislative Assembly is wholly void or that the election of respondent No. 1, Sardar Thakar Singh of Kala Sanghian, is void, and that this respondent and respondent No. 6 Shri Milkhi Ram, have incurred certain disqualifications.

2. Sardar Thakar Singh of Kala Sanghian, respondent No. 1, was declared elected from the Kapurthala Constituency for the said Legislative Assembly on 7th February, 1952, in the last general elections. The petitioner alleges that while the nomination papers of respondents Nos. 11 and 12, Shri Shadi Ram and Shri Ram Sarup, were rejected, the nomination paper of respondent No. 3, S. Thakar Singh of Kassochahal, was improperly accepted, because it was not accompanied by form V-A as required by Rule 11-A of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 (hereinafter to be referred as the Rules). It is admitted by the petitioner that the respondent No. 3 did appoint Sardar Kirpal Singh, son of Sardar Bishen Singh, of Dhilwan, as his election agent. The objection is that the form V-A evidencing such appointment was not filed with the nomination papers. An objection is said to have been raised on this ground to the nomination papers of this respondent before the Returning Officer but he repelled it and accepted one of his nomination papers. The petitioner alleges that this improper acceptance has materially affected the result of the election. Other allegations of the petitioner are that respondents Nos. 1 and 6 failed to lodge return of election expenses with the proper authority and have, therefore, incurred disqualification under section 7(c) and section 143 of the Act and that the respondent No. 1 made false return of election expenses.

3. Of the twelve respondents Sardar Thakar Singh of Kala Sanghian, No. 1, Sardar Thakar Singh of Kassochahal, No. 3, Sardar Kartar Singh, No. 4, Shri Milkhi Ram, No. 6, Shri Shadi Ram, No. 11, and Shri Ram Sarup, No. 12 filed written statements. Proceedings were *ex parte* against the others. Later on respondents Sardar Kartar Singh, Shri Milkhi Ram, and Shri Shadi Ram did not take part in the proceedings. Respondents Nos. 1, 3, and 12 admit that respondent No. 3 did appoint Sardar Kirpal Singh as his election agent. Respondents Nos. 3 and 12 aver that form V-A was not filed with the nomination paper by respondent No. 3 by over-sight. Respondent No. 1 states that respondent No. 3 appointed his

election agent in compliance with section 33(3) of the Act and Rule 11-A and in any case if no such form was filed with the nomination paper it was merely a technical but not a substantial defect. Respondents Nos. 1 and 6 have denied that they have incurred any disqualification as alleged by the petitioner and respondent No. 1 has denied that he has made a false return of election expenses. Respondent No. 12, Shri Ram Sarup, has further taken the plea that his nomination paper was improperly rejected by the Returning Officer and that rejection has materially affected the result of the election. He, therefore, claims to avoid the election on this ground. Respondent No. 1 made an application for permission to amend his written statement to urge in defence that the petitioner could not claim two declarations within the scope of section 84 of the Act, which was allowed.

4. Respondents Nos. 1 and 6 filed copies of the notifications of the Election Commission removing their disqualifications under sections 7(c) and 143 of the Act and thereupon the petitioner made a statement that he gave up his objections in this behalf against these two respondents.

5. The following issues were settled in the petition—

1. Whether the nomination paper of respondent No. 2, Sardar Thakar Singh, was improperly accepted; if so, has it materially affected the result of the election?
2. Has respondent No. 1, Sardar Thakar Singh, filed a false return of election expenses as alleged in para No. 12 of the petition; if so, to what effect?
3. Whether respondent No. 12, Shri Ram Sarup, can raise the question of improper rejection of his nomination paper in defence and whether the Tribunal can go into this question?
4. Was the rejection of the nomination paper of respondent No. 12, Shri Ram Sarup, improper; if so, has it materially affected the result of the election?
5. Whether the petitioner can claim two declarations within the scope of section 84 of the Representation of the People Act, 1951; if not, what is the effect of his having claimed two declarations?

6. Issue No. 1.

It is an undisputed fact that respondent No. 3 while filing his nomination paper Ex. P-A, which was accepted, and two more nomination papers Exs. P-B. and P-C, upon which no order was made by the Returning Officer, appended, in each of the nomination papers, declaration of the appointment of Sardar Kartar Singh, son of Sardar Bishen Singh, of Dhillwan, as his election agent. This fact is also evident from the nomination papers. This declaration is made according to the prescribed form for such a declaration in the form of nomination paper in schedule II of the Rules. It is not denied that the declaration itself is in proper form and is a valid declaration. In the petition and also in the written statements of respondents Nos. 1, 3, 4 and 12 it is clearly stated that respondent No. 3 did appoint Sardar Kirpal Singh as his election agent. In his statement as P.W.15 respondent No. 3 has stated that in his three nomination papers, he filed the form relating to the "appointment of election agent" at page 2 of each nomination paper but did not put in any separate form appointing an election agent. He was not particularly asked the question whether he did not appoint an election agent at all. So it is a fact that he did appoint an election agent. It is clear from his evidence that he did not file form V-A, under Rule 11-A, with the nomination paper Ex. P-A, that was accepted.

7. It is urged on behalf of the petitioner that since the respondent No. 3 did not file form V-A with the nomination paper there was no appointment of an election agent under section 40 of the Act with the result that there was contravention of that section and also of section 33(1) and (3) of the Act, which comes within the mischief of section 36(2) (d) of the Act, and so the Returning Officer was wrong in accepting the nomination paper of the respondent. The reply on behalf of respondent No. 1 is that infringement of section 40 of the Act is no ground for rejection of a nomination paper because there is no reference to that section in section 36(2) (d) of the Act, like sections 33 and 34, which find specific mention therein. It is further urged for this respondent that sub-sections 1 and 3 of section 33 of the Act do not require the filing of Form V-A with the nomination paper and all that those provisions require is the making of a declaration about the appointment of an election agent with the nomination paper.

8. It is provided in section 33(1) that a candidate shall deliver to the Returning Officer nomination paper completed in the prescribed form, and in sub-section 3 of that section that the nomination paper delivered under sub-section (1) shall be

accompanied by a declaration in writing subscribed by the candidate that he has appointed as his election agent either himself or another person who is not disqualified under the Act for the appointment and who shall be named in the declaration, and such declaration is to be delivered with the nomination paper otherwise the candidate is not deemed to be duly nominated. The form of nomination paper in schedule II under Rule 4 provides the form of such a declaration. It is clear that all that sub-sections 1 and 3 of section 33 of the Act require is that the nomination paper as prescribed in the form in schedule II of the Rules shall be completed and then delivered to the Returning Officer, and that it shall be accompanied by a declaration that an election agent has been appointed. Nothing more is required. It is nowhere provided in the Act that form V-A shall accompany the nomination paper. Thus so long as the nomination paper is completed in the prescribed form and is accompanied by the necessary declaration it is a valid nomination paper even though not accompanied by form V-A. It has been shown that respondent No. 3 did appoint an election agent and did make a proper declaration about his appointment in the nomination paper Ex. P-A. He omitted to file form V-A with the nomination paper; and that can at the most be non-compliance with the provisions of section 40 for which no penalty is prescribed. This non-compliance by respondent No. 3 does not bring the case within section 36(2) (d) as it does not amount to failure to comply with the provisions of section 33 (1) and (3). Therefore, the nomination paper Ex. P-A was not liable to be rejected under section 36(2) (d) for not filing form V-A. In election petition No. 242 of 1952, *Lala Mengh Raj Vs. Shri Bhiman Das and others*, the Election Tribunal at Ajmer, reported at page 1055 in Part II, Section 3, of the *Gazette of India, Extraordinary*, dated 24th December, 1952, has observed, at page 1059, that "the failure to file the form 5-A with the nomination paper is not a contravention of section 33 (3) of the Act which refers to a declaration and form 5-A is described as form of appointment of an election agent and is not a declaration. It is nowhere provided in the Act that it shall be filed with the nomination paper. Non-filing of the form 5-A did not, therefore, invalidate the nomination paper." This view is in consonance with the one we have taken above. Therefore, the nomination paper of respondent No. 3, *Sardar Thakar Singh of Kassochahal*, was properly accepted and the first part of this issue is decided against the petitioner. In view of this finding the second part of the issue concerning the material effect of the improper acceptance of the nomination paper does not arise.

9. Issue No. 2.

There is absolutely no evidence that respondent No. 1 filed a false return of election expenses and this issue was not even touched by the learned counsel for the petitioner at the time of arguments. It is, therefore, decided against the petitioner.

10. Issue No. 3.

Shri Ram Sarup, respondent No. 12, has attempted to have the election declared void on the ground of the improper rejection of his nomination paper. He has raised this in his written statement. It is clear from section 80 of the Act that an election can only be called in question by an election petition and in no other way. So it is not open to this respondent to obtain such a declaration by raising the question of the improper rejection of his nomination paper in his defence. Besides, he is decidedly challenging the election on this ground after the expiry of the limitation for the same. Therefore, this respondent cannot raise the question of improper rejection of his nomination paper in his defence, and it follows that the Tribunal cannot enquire into such a question at this stage. The same view has been taken in the decision of the election petition No. 326 of 1952, *Shri K. Subramanyam Vs. Shri Abdul Hamid Khan and others*, reported at page 2396r in Part I, Section 1, of the *Gazette of India, Extraordinary*, dated 13th November, 1952, in which at page 2396w the Tribunal at Madras has observed that "as a respondent it is not open to him to challenge the validity of the election on grounds which are not raised by the petitioner." So this issue is decided against respondent Shri Ram Sarup.

11. Issue No. 4.

In view of the finding on issue No. 3 this issue does not arise.

12. Issue No. 5.

This Tribunal has already given its finding on this issue on 3rd January, 1953, that it is open to a petitioner to claim declarations in the alternative within the scope of section 84 of the Act, but he may not claim cumulative declarations under that section. That order is appended herewith as Annexure A.

ORDER

The election petition is dismissed. The petitioner shall pay Rs. 250 as costs to respondent No. 1.

Announced.

Dated the 12th January, 1953.

(Sd.) MEHAR SINGH, *Chairman*.

(Sd.) KARTAR SINGH, *Member*.

(Sd.) JIA RAM SAXENA, *Member*.

BEFORE THE ELECTION TRIBUNAL AT KAPURTHALA

1. S. Suchet Singh, son of S. Harnam Singh, of Kapurthala—*Petitioner*.

Versus

- S. Thakar Singh, of Kala, and others—*Respondents*.

2. S. Lachhman Singh, son of Dhanna Singh, of Lakhanke Padde—*Petitioner*.

Versus

- S. Basawa Singh, of Dhaliwal Balt, and others—*Respondents*.

3. S. Gurbachan Singh, son of S. Beant Singh, of V. Panchhat, at present Phagwara—*Petitioner*.

Versus

- Shri Hans Raj, son of Shadi Ram, of Phagwara, and others—*Respondents*.

4. Shri Sunder Lal, son of Ram Lal, Advocate, of Bassi—*Petitioner*.

Versus

- S. Gurdial Singh, of village Lahra, Advocate, at present Bassi, and others.
—*Respondents*.

ORDER

This order will dispose of a preliminary issue, which is common to four cases noted above. The issue is: Whether the petitioner can claim two declarations within the scope of section 84 of the Representation of People Act, 1951; if not, what is the effect of his having claimed two declarations?

1. In the election petition No. 203, S. Sochet Singh Vs. S. Thakar Singh and others, the petitioner claims—

(a) that the election be declared to be wholly void;

(b) that respondents Nos. 1 (S. Thakar Singh Kala) and 6 (Shri Milkhi Ram) be disqualified and the election of respondent No. 1 (S. Thakar Singh Kala) be declared to be void.

2. In the election petition No. 204, S. Lachman Singh Vs. S. Basawa Singh and others, the petitioner claims that—

(a) the election be declared to be wholly void;

(b) the respondents Nos. 1 (S. Basawa Singh) and 3 (S. Inder Singh) be disqualified and the election of respondent No. 1 be declared to be void.

3. In the election petition No. 197, S. Gurbachan Singh Vs. Shri Hans Raj and others, the petitioner claims that the election is wholly void and also that it be declared that the election of respondent No. 1 (Shri Hans Raj) is void and respondent No. 1 be disqualified for corrupt and illegal practices.

4. In the election petition No. 202, Shri Sunder Lal Vs. S. Gurdial Singh and others, the petitioner claims a declaration firstly, that the election is wholly void, or secondly, that the election of the returned candidate of respondent No. 1 S. Gurdial Singh is void.

The learned counsel, Shri Des Raj, who represents the respondents in all the cases, excepting case No. 4 above, contends that a petitioner may claim any one of the three declarations enumerated in section 84 of the Representation of People Act, 1951, (hereinafter to be referred as the Act), and the use of the words 'any

one' in the section precludes him from claiming more declarations than one. He refers to section 98 of the Act and urges that the Tribunal can make one of the four orders enumerated in this section. If it be held that more declarations than one are permissible under section 84 of the Act, such construction of the section, in his opinion, would not be harmonious with the provisions of section 98 of the Act as it would militate against one of the accepted principles that the provisions of a statute are to be harmoniously interpreted.

In cases Nos. 1 and 2 Shri Tek Chand, learned counsel for the petitioner, has argued in reply that section 100, in sub-sections 1 and 2, of the Act provides grounds on the basis of which the Tribunal may make declaration that the election is wholly void or the election of the returned candidate is void. If the petitioner is debarred from claiming more declarations than one under section 84 of the Act, he will be able to urge only one set of grounds either under sub-section 1 or under sub-section 2 of section 100 of the Act, which, according to him, would lead to the result that one of the sub-sections would become redundant and superfluous.

On behalf of the petitioner in the third case, S. Ajit Singh Sarhadi, his learned counsel, has drawn the attention of the Tribunal to section 99 (1) (a) (i) of the Act under which the Tribunal is required to record a finding whether any corrupt or illegal practice has or has not been proved to have been committed by, or with the connivance of, any candidate or his agent at the election, and the nature of that corrupt or illegal practice. His contention is that if the petitioner is limited to claiming only one declaration of the three enumerated in section 84 of the Act, and assuming that he claims the declaration that the election is wholly void, then he can urge only the grounds in his petition that are covered by sub-section 1 of section 100 of the Act, so that the evidence would not be led at the trial with regard to any illegal or corrupt practice other than that of bribery or undue influence, and the Tribunal would be precluded from giving a finding under section 99 (1) (a) (i) of the Act.

In the 4th case, Shri Sunder Lal Vs. S. Gurdial Singh and others, Shri Des Raj appeared for the petitioner and S. Ajit Singh Sarhadi for respondent S. Gurdial Singh, and for all practical purposes adopted the arguments as set out above, though with some awkwardness as they were raising contentions against their own arguments in the other cases and had to adopt arguments that they were not prepared to accede to in those cases.

The relevant sections bearing on the point under discussion are sections 81, 83, 84 and 98 to 101 of the Act.

Sections 84 and 98 of the Act provide as below—

"84. A petitioner may claim any one of the following declarations:—

- (a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
- (c) that the election is wholly void.

98. At the conclusion of the trial of an election petition the Tribunal shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of the returned candidate to be void; or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or
- (d) declaring the election to be wholly void".

There is nothing in section 98 of the Act which debars a petitioner from claiming more declarations than one. The section relates only to the powers of the Tribunal, at the conclusion of the trial of an election petition, and provides for the kind of order that the Tribunal is required to make upon the evidence before it. It enumerates four kinds of orders that the Tribunal has power to make. The provisions of this section do not suggest a conclusion that a petitioner cannot claim more declarations than one under section 84 of the Act because the Tribunal is to make an order upon the material in the case according to the section and its powers to make such an order under this section are not in any way hedged in by the provisions of section 84 of the Act. We, therefore, do not appreciate how the provisions of section 98 of the Act will not be in harmony with the provisions of section 84 of the Act if a petitioner were to claim more declarations than one.

It is provided in section 81 (1) of the Act that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-sections 1 and 2 of section 100 and in section 101 of the Act. Section 83 (2) of the Act provides that the petition shall set forth particulars of any corrupt or illegal practice which the petitioner alleges. These two sections relate to the presentation of a petition and its contents. Under the former section the petitioner is at liberty to allege all or any of the grounds specified in sections 100, sub-sections 1 and 2, and 101 of the Act. If he can do so, those grounds may naturally, if proved, cover two declarations as enumerated under section 84 of the Act. The latter section allows the petitioner to set forth without restriction particulars of any corrupt or illegal practice which he alleges. The provisions in those two sections do not make it incumbent on a petitioner to state any declaration in the petition. All that he is enjoined by law to do is to give full particulars of any corrupt or illegal practice that he alleges. If he succeeds in establishing his allegations, the Tribunal will have to make an order according to section 98 of the Act even though the petitioner has omitted to state the declaration or declarations he may claim. We do not, therefore, consider that the claim for a declaration by the petitioner is an essential part of the petition. That being so, it would not make any appreciable difference whether he claims one or more than one declaration in his petition. Besides, section 84 enumerates three declarations and the petitioner may claim any one of them, but there is nothing in the section which may be read as prohibiting him from claiming more declarations than one in the alternative, though the words 'any one' in the section would seem to militate against the construction that he can claim—cumulative declarations. We see no justification for restricting the petitioner to a particular declaration out of the three enumerated in section 84 of the Act for that would be restricting him from alleging all the corrupt or illegal practices that may have been committed during the election and thus depriving the Tribunal of material evidence in the case, one consequence of which may be that the Tribunal may not be in a position to give a finding according to section 99 (1) (a) (i) of the Act. It would be shutting out a part of the case of the petitioner, for which there is no justification in section 94 of the Act, by restricting him into alleging one set of facts and claiming one declaration only, when failing that he may succeed in the alternative claim on another declaration on proof of somewhat different facts. So the harmonious construction of sections 81 (1), 83 (2), 84, 98, and 100 and 101 of the Act seems to us to be that it is open to a petitioner to set up alternative cases and to claim alternative declarations. We are, however, of the opinion that he may not claim cumulative declarations in view of the words 'any one' in section 84 of the Act. A similar view has recently been taken on this point by the Election Tribunal at Quilon, in Travancore-Cochin State, in election petition No. 33 of 1952, *Shri C. K. Ramchandran Nair Vs. Shri Ram Chander Dass and others*, published in the *Gazette of India, Extraordinary*, Part I, dated 11th November, 1952, page 23968.

In case No. 4 above reliefs are claimed in the alternative and in the view that we have taken the petition is in order. In the other three cases the petitioners have made applications stating that they claim the reliefs in their respective petitions in the alternative and not cumulatively. We, therefore, decide the issue in favour of the petitioner in each case.

The copies of this order be placed on the record or each one of the above cases.

Dated the 3rd January, 1953.

(Sd.) MEHAR SINGH, *Chairman.*

(Sd.) KARTAR SINGH, *Member.*

(Sd.) JIA RAM SAXENA, *Member.*

[No. 19/203/52-Elec.III.]

S.R.O. 165.—WHEREAS the election of Shri Kunwar Jaswantsingh S/o Prithivi Singh of Ward No. 20, Bikaner, as a member of the Legislative Assembly of Rajasthan from Bikaner Tehsil constituency has been called in question by an Election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Chandra Nath S/o Gyana Ram of village Rajn Bagh, Tehsil Loonkaran, District Bikaner,

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 88 of the said Act, for the trial of the said

Election Petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER.

ELECTION PETITION No. 226 OF 1952.

Shri M. P. Asthana—*Chairman*.

Shri M. C. Bhandari—*Member*.

Shri Goverdhandas T. Gajria—*Member*.

Chander Nath s/o Gyana Ram, resident of village Ram Bagh, Tehsil Loonkaransar, district Bikaner.—*Petitioner*.

Vs.

1. Kunwar Jaswant Singh s/o Prithivi Singh, Ward No. 20, Bikaner.
2. Gopal Lal s/o Girdharilal Dhamani Palace, Bikaner.
3. Gopal Chandra s/o Ramchandra, Jetpur, Tehsil Loonkaransar, District Bikaner.
4. Ch. Kumbha Ram s/o Era Ram, Industrial Area, Pokar, Bikaner at present "C" Scheme, Jaipur.
5. Magharam s/o Chuni Lal, outside Jassore Gate, Bikaner.
6. Bhim Sen s/o Mangla Ram, Kisan, Chhatrawas, Bikaner.
7. Daulat Ram s/o Dhularam, resident of Dhanl, Tehsil Sardarsar, District Churu.
8. Motichand s/o Premchand, Khazanchi Mohalla, Bikaner.

Respondents

Shri Gopal, Advocate, assisted by Shri Bhanwarlal Vakil for the petitioner.

Shri Uma Shanker Trivedi, Bar-at-Law, with Shri Badri Prasad Vyas, Advocate for respondent No. 1.

Respondent No. 6 Shri Bhim Sen in person.

Petition under section 81 of the Representation of the People Act, 1951 for declaration of election of respondent No 1 Kunwar Jaswant Singh to the Rajasthan Legislative Assembly, from the Bikaner Tehsil Constituency, as void.

JUDGMENT

The facts giving rise to this petition briefly stated are:—

The petitioner and the respondents were candidates in the 1951 General Election of the Rajasthan State Legislative Assembly from Bikaner Tehsil constituency, district, Bikaner for which they filed their nomination papers before the Returning Officer who held their scrutiny on 28th November, 1951. Two objections in regard to the nomination papers of the petitioner, were raised before the Returning Officer viz., (1) that he is a member of the district Vittran Committee, Bikaner, and as such holds an office of profit under the Rajasthan Government, and (2) that the thumb impressions of the proposer and the seconder had not been duly put on the nomination papers in the presence of the Returning Officer as laid down in rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. It was an admitted fact that the thumb impressions of the proposer and the seconder were not affixed on the nomination papers in the presence of the Returning Officer. The proposer and the seconder were, however present who emphatically declared that they had placed their thumb impressions on the nomination papers of the petitioner. The Returning Officer after considering these objections passed the following order:—

"There are two objections in regard to the nomination of this candidate viz.,

- (1) that he is a member of the District Vittran Committee, Bikaner and as such holds an office of profit under the Rajasthan Government,
- (2) that thumb impressions of the proposer and seconder have not been duly put in the presence of the Returning Officer as laid down in Rule 2(2) of the Representation of the People (Conduct of Elections and Election petitions) Rules, 1951."

"The candidate admits that he is a member of the District Vittran Committee which has been constituted by the Rajasthan Government for the purpose of controlling the distribution of controlled commodities i.e. foodgrains, sugar, cloth etc. to the people in the district. Since he holds a position from which he can exercise influence over the electors, he is disqualified to stand as a candidate for the Rajasthan Legislative Assembly. His being the member of the District Vittran Committee amounts to holding an office of profit."

"This is an admitted fact that the thumb impressions of Shri Tulchha Ram, proposer and Sri Hiro, seconder were not fixed on the nomination paper in the presence of the Returning Officer. The proposer and the seconder are, however, present and emphatically declare that they have placed their marks of thumb impressions on the nomination paper of this candidate. It was essential as provided in the Rule that the thumb impressions should have been fixed on the nomination paper in the presence of the Returning Officer, who should have attested this fact, but omission to do so is merely a technical defect which does not vitiate the nomination paper."

"In view of objection No. 1 having been sustained in this case the nomination papers of this candidate are hereby rejected on this ground."

He thus held that the omission on the part of the proposer and seconder to put the thumb marks in the presence of the Returning Officer is merely technical defect, which did not vitiate the nomination paper. But he accepted the objection No. 1 and held that as a member of the District Vittran Committee the petitioner held an office of profit and was, as such, disqualified from becoming a member of the State Legislative and thus rejected his nomination papers.

The petitioner in his petition which he has filed under section 81 of the Representation of the People Act, 1951, contends that the Returning Officer has committed an error in rejecting his nomination papers on the above ground inasmuch as his finding that member of the Vittran Committee is an office of profit, is erroneous, as the functions of the said committee are only advisory and neither the members have been invested with any power, nor do they receive any profit or remuneration from the Government. He further contends that the improper rejection of his nomination papers has materially affected the result of the election from this constituency and as such the election of the respondent No. 1 should be declared as void under section 100 of the Representation of the people Act, 1951.

Out of the eight respondents, only respondents No. 1 and 6 have appeared, but it is the respondent No. 1, the successful candidate, who has contested the petition.

The respondent No. 6, who had withdrawn his candidature after the acceptance of his nomination paper has filed his written statement admitting the petition.

The respondent No. 1 has raised the following pleas in his written statement:—

- (a) That the respondent No. 1 was unaware of the fact whether the petitioner was a candidate or not for the 1951 General Election of the Rajasthan State Legislative Assembly from Bikaner Tehsil Constituency.
- (b) That the respondent No. 1 had no knowledge about the rejection of the nomination papers filed by the petitioner.
- (c) That if the Returning Officer had rejected the nomination papers of the petitioner on the ground stated by the petitioner in his petition then he had rightly rejected them because to be a member of the Vittran Committee is to hold an office of profit under the Government of Rajasthan.
- (d) The finding of the Returning Officer that a member of the "Vitran Committee" holds an office of profit is neither illegal nor unreasonable.
- (e) In any case the rejection of the petitioner's nomination papers has not materially affected the result of the election in the said constituency because of the following:—
 - (i) That the petitioner is a member of the congress organisation and was an office bearer of that organisation.
 - (ii) that if the petitioner was a candidate at all, he was just a covering candidate for the real congress candidate, Chowdhry Kumbha Ram for that constituency.
 - (iii) that if the petitioner's nomination papers had been held in order he would certainly have withdrawn his candidature in favour of Chaudhry Kumbha Ram as did respondents Nos. 6 and 7 who also were congressmen.

- (iv) that the respondent No. 4 who is a reputed congressman and a prominent leader of the Jat community and was then also a Minister in the Congress Ministry of the Rajasthan Government, was defeated by respondent No. 1 by a majority of 4,516 votes, the respondent No. 1 having secured 10,512 votes. It is, therefore, impossible for the petitioner to suggest that he being a congressman of a very much lesser importance influence and status, could have better chance of success against the present respondent in the said election. In fact if the petitioner's nomination papers had not been rejected he would not have been allowed to contest the election at all in the presence of respondent No. 4 or in the alternative, if he had stood and fought the elections he had no prospects to win the elections against the respondent No. 1 and therefore the result of the election has not been materially affected.
- (v) that the petitioner was just a dummy candidate for the respondent No. 4 and had throughout been working for and on behalf of Ch. Kumbha Ram with all the resources at his disposal. The petitioner was not the real candidate at all but it was Ch. Kumbha Ram who was the real contesting candidate from this Constituency.
- (vi) that the nomination papers of the petitioner would also have been rejected on other grounds as well. From the above pleadings of the parties the following issues were framed by the Tribunal:—

ISSUES

1. Whether the petitioner did not hold an office of profit under the Government as a member of "Vitran Committee"? If so, was the nomination paper improperly rejected?

2. In case it is held that the nomination paper of the petitioner was improperly rejected, has it materially affected the result of the election?

3. To what relief, if any, is the petitioner entitled?

The petitioner filed a list of 36 witnesses out of whom he examined only four including himself, whereas the respondent No. 1 examined 9 including himself. The other respondents did not lead any evidence. Before the evidence was recorded the respondent No. 1 filed an application in which he prayed for two more issues on the grounds:—

- (1) that the authority which was given by the petitioner to one Roopchand Sogani to present the election petition before the Election Commission, does not bear the former's signatures,
- (2) that the petitioner's signature on the said authority is not genuine, and
- (3) that the thumb impressions of Tulcharam, proposer and Hiro, seconder of the petitioner were not affixed on his nomination papers in the presence of the Returning Officer, which is contrary to the mandatory provisions of law and as such his nomination papers should have been rejected on this ground even. We have considered this application and dismissed it *vide* our order dated 8th December 1952. So the only issues which require our decision are those which are mentioned above and are being discussed separately.

Issue No. 1.—The Returning Officer of the Bikaner Tehsil constituency rejected the petitioner's nomination papers on the ground that the petitioner was a member of the "Vitran Committee", which is an office of profit and as such is a disqualification. It is admitted on behalf of the petitioner that he, at the time of filing of his nomination papers, was a member of the "Vitran Committee", but his contention is that such membership is not an office of profit in as much as the members are all honorary and have no powers at all and their duties are only advisory. They even do not receive any allowance, diet money, salary or T.A. or any other allowance for performing duties as such members. The learned advocate for the petitioner has placed before us the Notification of the Rajasthan Gazette containing the names of the various persons who were appointed as members of such Committees including that of the petitioner, and also the rules framed by the said Government for the working of such committees, which are contained in the Rajasthan Government Gazette Notification No. 7161/pro, dated 3rd July 1951 which provide that the members of the "Vitran Committee" shall work without any salary. The idea underlying the formation of these committees by the Government was to see as to how best could the distribution of various rationed articles be made amongst the public with the aid of such members, who had no powers at all but could only make suggestions which would best serve the underlying idea.

All the powers of management, control, etc. were given to the Collector, who was the Chairman of this Committee. It is an admitted position that the petitioner did not get any remuneration either in cash or in kind as a member of the "Vitran Committee". In support of this contention he has examined Shri Rawatmal, Advocate, who also is a member of the "District Vitran Committee". He has stated that a member of the "Vitran Committee" wields no influence nor is he given anything for distribution to the public, nor does he receive any remuneration. But the learned counsel for the respondent No. 1 has contended before us that the profit that the petitioner received as a member of the "Vitran Committee" was only the influence which he gained on account of his position which should be deemed to be profit as the same need not necessarily be in cash. The expression "OFFICE OF PROFIT" has been defined in Wharton's Law Lexicon as "Any office held direct from the Crown which nominally carries a salary". He has further referred us to the meaning of the word "PROFIT" as given in the Webster's Dictionary. No doubt the word "PROFIT" does not necessarily mean any remuneration in cash but it certainly means some kind of advantage or gain which is tangible or which can be perceived. We have been referred to the rules framed by the Rajasthan Government for the functioning of the "Vitran Committee" and we do not find even the least suggestion from them that any kind of profit could ever be contemplated. On the contrary, these rules suggest that the membership of the "Vitran Committee" carries with itself some kind of public duty for the purpose of advising and suggesting to the Government the best method of distribution of rationed articles amongst the public. Accordingly we are of opinion that the petitioner, by being a member of the "Vitran Committee" did not hold any office of profit as contemplated by Article 191 of the Constitution of India and as such did not incur any such disqualification. We, therefore, come to the conclusion that the nomination papers of the petitioner had been improperly rejected by the Returning Officer and answer the issue No. 1 accordingly.

Issue No. 2.—In view of our finding on Issue No. 1, we have to consider whether the improper rejection of the petitioner's nomination papers has materially affected the result of the election in this particular constituency. According to section 100(1) (c) of the Representation of the people Act, 1951 if the Tribunal is of the opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, it shall declare the election wholly void. It has been uniformly held that there is a strong presumption that in the case of improper rejection of the nomination paper, the result is materially affected, whereas no such presumption arises in the case of improper acceptance, as in the first case the whole electorate is deprived of its right to exercise franchise in favour of the rejected candidate and in the second there is no denial of such right to the electorate, and that such a presumption would require most conclusive evidence for its rebuttal and in the absence of such evidence the election of the returned candidate must be declared as void. This point has come up for consideration before the various Tribunals both under the old law and the new, the provisions of which are identical so far as section 100 (1)(c) of the Representation of the People Act, 1951 is concerned, and we have very carefully gone through these judgments beginning with the Rohtak Case decided in 1921 and reported in the Indian Election petitions by Hammond, Vol. I, page 183 and going right up to the present time. In all these cases it has been held that a very strong presumption arises that in case of improper rejection of nomination paper the result of election has been materially affected, and that there was no sufficient evidence to rebut this presumption; on the face of it, in our opinion, the words of section 100(1)(c) of the Representation of the People Act do not suggest any such distinction between improper acceptance and rejection of a nomination paper, but the various Tribunals have interpreted the section in the above manner and we are in complete agreement with the interpretation put by them. In the case of Shri Hansraj Vs. Shri Ram Singh and others being Election Petition No. 2 of 1952, reported on page 2451 of the *Gazette of India, Extraordinary* Part I Section 1, dated 19th November 1952 the Delhi Tribunal observed that they could not conceive of any legal evidence which could assist them in finding what would have happened. It appears from these observations that the evidence led before this Tribunal was vague and insufficient to rebut the presumption which arose in favour of the petitioner. Next case in which this point has been discussed at great length by reference to various authorities, is the case of Nrisinha Kumar Vs. Satyendra Chandra Ghosh Moullick and others, being Election Petition No. 7 of 1952 reported on page 2519 of the *Gazette of India, Extraordinary*, Part I, Section 1, dated 4th December 1952 and in conclusion this Tribunal has observed that they were not convinced that the presumption had been rebutted to such an extent that an irresistible inference could be drawn that the result of the election would not have been materially affected on account of the rejection of nomination paper of the petitioner and another candidate. Another case in which the question of rebuttal of presumption in case of improper rejection of nomination has been discussed is the case of Bajinath Prasad Vs. Chandrashwar Narain Prasad Singh and

others, being Election petition No. 86 of 1952, reported on page 2527 of the Government of India Gazette Extraordinary Part 1, section 1, dated 5th December 1952 in which the Patna Tribunal has observed as under:—

"We think, it is unnecessary to deal with that evidence which is more or less guess work of the witnesses in view of the general presumption arising in the case of improper rejection of a nomination. The presumption has not been rebutted in this case."

The next case dealing with this point is the case of Ramlal vs Sujani Ram and others reported on page 2481 of the Government of India, *Gazette Extraordinary*, Part 1, section 1, dated 27th November 1952 in which the Chairman of the Tribunal Shri S. A. Pande, disagreeing with the opinion of the two members, has, on page 2847 remarked as under:—

"Under section 100(1)(c) of the Representation of the People Act, 1951, the Tribunal can declare the election to be wholly void only when the result of the election has been materially affected by the rejection of any nomination paper. On a plain and proper interpretation of this provision, I imagine that even the petitioner has to satisfy the Tribunal that the result of the election has been materially affected by the rejection of respondent No. 3 Prayagsingh's nomination paper. He has not led any evidence on this point beyond the bare fact that respondent 1 had secured 125 votes more than respondent No. 2 Respondent No. 1 was a congress candidate. Respondent 2 was an independent candidate. Respondent 3 Prayagsingh was a candidate for the Ram Rajaya Parishad Party. It is conceivable that when respondent 3 Prayagsingh admittedly canvassed for respondent 2 Lal Shyamshah in the election, he might have advocated to his own followers to vote for respondent 2 Lal Shyamshah. It is, therefore, not improbable that if respondent 3 Prayagsingh had also been a candidate, respondent 2 Lal Shyamshah might have lost some of the votes secured by him."

In this connection the following observations made by the Chairman and one member of the Jullundur Tribunal in the case of Premnath Vs Ramkishan reported on page 1017 of the Government of India *Gazette Extraordinary*, dated 19th December 1952 in which the third member of the Tribunal has dissented from the view taken by the other two, are very relevant and important.

"In this view of the matter, it is not necessary for us to determine whether the result of the election has been materially affected by the rejection of the nomination paper of Dr. Ram Rakha, on which question a good deal of evidence has been adduced. Though we are naturally reluctant to strike a discordant note from the generally accepted view, of the Election Tribunals that the improper rejection of a nomination *ipso facto* affects materially the result of an election, we would like to make a few observations. It is axiomatic to say that an authority must be deemed to have been decided on the facts of a particular case and we venture to say that rejection in this case of the nomination paper of Dr. Ram Rakha could not conceivably affect the election result. In all the election cases which have been brought to our notice, either the petitioner himself was the candidate whose papers were rejected or in the alternative it was the respondent whose acceptance of nomination paper was in question. The remarkable feature of the present case is that Dr. Ram Rakha whose nomination paper is said to have been improperly rejected has not been made a party and as a witness of the petitioner; he has frankly stated that he has no interest whatsoever in the disputed question which we are called upon to resolve. Moreover Dr. Ram Rakha who filed his nomination paper as an accredited representative of the Socialist Party espoused the cause of Shri Durga Dutt during the election after the rejection of his own paper and indeed this gentleman was adopted by the Socialist Party as its own candidate for this election. Dr. Ram Rakha has admitted that the leaders of the Socialist Party including Shri Jai Perakash Narain canvassed for Shri Durga Dutt during the election campaign. Shri Durga Dutt who commanded a considerable personal influence in the town was lent all the support which was available to the Socialist Party including the active assistance of Dr. Ram Rakha and in spite of these favourable influences managed to secure only 1,435 votes as against 16,098 of the returned candidate and 5,142 of the petitioner.

It may reasonably be asked, what objective facts are there before the Tribunal to enable them to come to a conclusion that the result of the election has been materially affected by rejection of Dr. Ram Rakha's nomination. We can think of none. Every word in a Statute must be given its natural meaning, as far as it is possible and superfluity cannot generally be attributed to Legislative enactments. It seems to us therefore that a Tribunal can only declare an election void if in the opinion of the Tribunal the result of the election has been materially affected in consequence of an improper rejection of nomination.

Therefore the ratio decided of the above decisions of the Tribunals is that in case of improper rejection of a nomination paper a presumption arises that the result of the election has been materially affected and as such the election would be void. No where it has been suggested that this presumption is irrebuttable except that it requires a very strong and convincing evidence to rebut it."

This also appears to be the underlying idea of section 100(1)(c) of the Representation of the People Act, 1951, as this section would have been worded in a different manner so as to indicate the real intention of the Legislature if it really meant otherwise. Therefore it follows from the trend of the judgments of the various Tribunals, which we have had the advantage to go through very carefully, that it becomes a question of fact in each case depending upon the evidence led by the parties, whether this presumption has been rebutted or not. To hold otherwise would be to replace the provisions of section 100(1)(c) of the Representation of the People Act, 1951 with our own which the Legislature never intended. A contrary view appears, to have been taken by the Lucknow Tribunal in the case of *Brijnaresh Singh vs. Hon'ble Thakur Hukumsingh and others*, being Election petition No. 208 of 1952 reported on page 1029, Part II, section 3, of the Gazette of India Extraordinary dated 20th December 1952, which has come to a conclusion that in the case of improper rejection of a nomination paper, it is impossible to prove that the result of the election has or has not been materially affected. It has further held that the condition precedent to the declaration of the election as void, mentioned in clause (c) of sub-section (1) of section 100 of the Representation of the People Act, 1951, is not only superfluous, but is incapable of fulfilment, and as such an improper rejection of a nomination paper wholly avoids the election. In view of the interpretation put by this Tribunal, it has suggested that the Legislature should take an early opportunity to remove all doubts by amending section 100(1)(c) of the Act. With all due respect, we are unable to agree with this view as the words of section 100(1)(c) do not go so far as to convey this idea.

After giving our most thoughtful consideration to the provisions of section 100(1)(c) of the Representation of the People Act, 1951, and also the judgments by the various Tribunals, who had to deal with the interpretation of this section, right from the Rohtak case decided in 1921 upto this time, we are of the opinion that the presumption which initially arises in favour of the petitioner on account of improper rejection of his nomination paper, is not incapable of rebuttal. This will depend upon the facts which stand proved from the evidence on the record, which cannot be disputed, and which would lead the Tribunal to form an opinion that the result of the election has not been materially affected by improper rejection of the nomination paper. It, therefore, follows that it is a question of fact depending upon the evidence in each case whether the presumption arising out of the improper rejection of nomination paper, has been rebutted or not. It is very significant that in no case decided upto this time the Tribunal has shut out the evidence to rebut the initial presumption. This supports the view that the presumption is rebuttable. If it were irrebuttable, then the Legislature would have expressed it as such in clear and unambiguous terms and the various Tribunals would have disallowed evidence to be led to rebut it. In the cases decided upto this time, either the respondents have not led any evidence to rebut this presumption or the evidence was not sufficient and conclusive or it was very vague to warrant a conclusion against the presumption.

The next question for our consideration is whether in this case respondent No. 1 has succeeded in rebutting the presumption which initially arises in favour of the petitioner. He has alleged in his written statement that even if the petitioner's nomination papers have been improperly rejected, the result of the election from the constituency in question has not been materially affected on account of the following facts:

- (a) that the petitioner is a member of the congress organisation and was and is an office bearer of that organisation.

- (b) that if the petitioner was a candidate at all he was just a covering candidate for the real congress candidate, the respondent No. 4 Chaudhry Kumbha Ram from the constituency.
- (c) that if the petitioner's nomination papers had been held in order, he would certainly have withdrawn his candidature in favour of respondent No. 4 as did respondents Nos. 6 and 7 who were also congressmen.
- (d) that the respondent No. 4 Ch. Kumbha Ram who is a reputed congressman and also an acknowledged leader of the Jat community and was also a Minister in the Rajasthan Government, was defeated by the respondent No. 1 by a majority of 4516 votes and it is, therefore, impossible even to think that the petitioner could ever have succeeded as against the respondent No. 1. It is in fact perfectly reasonable and proper that under these circumstances even if the petitioner's nomination papers had not been rejected, he would not have been allowed to stand at all in the presence of the respondent No. 4 and even if he had been allowed to stand, he would never have succeeded as against the respondent No. 4 and therefore the result of the election has not been materially affected, and
- (e) that the petitioner was just a dummy candidate and had throughout been working for the respondent No. 4 with all the resources at his disposal.

In our opinion, if the above facts are proved from the evidence adduced by both the parties before us, then keeping in view, the provisions of section 100(1)(c) of the Representation of the People Act 1951 and the interpretation put upon it by the various Tribunals upto this time, decisions of some of which have been discussed above, the respondent No. 1 shall be deemed to have rebutted the presumption which initially arises in favour of the petitioner, because if from the evidence led before us, we come to the conclusion that the above facts are proved then we cannot arrive at any other conclusion but the one *viz.* that in this case the respondent No. 1 has successfully rebutted the presumption. No doubt the various Tribunals have held that a very strong and convincing evidence is required to rebut this presumption and in our opinion, the facts which have been brought out in the evidence led before us which are not controverted at all by the petitioner, but have been either admitted by him or by his witnesses, have rebutted the presumption *viz.* that the result of the election has not been materially affected by the improper rejection of the nomination papers. The facts which stand proved from the evidence on the record are that (1) the petitioner was and is a member of the congress and so also Ch. Kumbha Ram, Bhimsen and Daulatram respondent No. 4, 6 and 7 respectively out of whom respondent No. 6 Bhimsen was and is still the Secretary of the Bikaner Congress Committee and the Tehsil Loonkaransar Congress Committee is subordinate to the Bikaner Congress Committee, (2) Respondent No. 4 Ch. Kumbha Ram was one of the congress Minister in the Rajasthan Government, and is one of the prominent leaders of the congress in Rajasthan, (3) the respondent No. 4 had been officially nominated by the Congress High Command as their candidate in the Bikaner Tehsil constituency, as it has been admitted by Shri Rawatmal Advocate, who has been examined as a witness on behalf of the petitioner that the Provincial Congress Committee sent a telegram to the Returning Officer to allot him the party symbol of two bullocks with yoke on to Ch. Kumbha Ram (4) the petitioner after his nomination papers had been rejected, actually worked and canvassed for the respondent No. 4 as he was the official congress candidate, and (5) after the nomination papers of various congress candidates were accepted, the Congress High Command permitted only their official candidate to contest the election and asked the others to withdraw as was done in this case.

It has been argued before us by the learned counsel for respondent No. 1 that voting in the last general elections took place on the basis of symbols, and in the case of a good majority of voters the question of individuals was very insignificant as they voted only for a particular party on the basis of the symbol. This argument, in our opinion so far as the facts of this case and the lines on which the last general elections were held are concerned is not without any force. He further contends that the petitioner was only a dummy candidate for respondent No. 4 along with respondents 6 and 7 as they also had given the symbol of two bullocks with yoke on as their first preference and as soon as the nomination papers of Ch. Kumbha Ram were accepted, respondents 6 and 7 withdrew their nomination papers whereas no question of allotment of symbol arose in the case of the petitioner as his nomination had been rejected by the Returning Officer. According to the petitioner he had filed only one nomination paper, whereas it is proved from the file of the nomination papers received from the Returning

Officer that he had filed two sets of such papers. He also says that this petition was drafted at Jalpur in the congress office by a Vakil whose name he does not remember and that Shri Rupchand Sogani, pleader, who presented his petition at Delhi before the Election Commission did not charge him any fee or travelling expenses. These facts which are all admitted by the petitioner support the contention of the respondent No. 1 that the petitioner was only a dummy or a covering candidate for the respondent No. 4 who was the real congress candidate during the last general elections. No doubt the facts in this case are very peculiar and we have no hesitation to come to the conclusion that the above facts which have been proved beyond any doubt are sufficient to rebut the presumption that the result of the election has been materially affected by the improper rejection of the petitioner's nomination paper. We are also convinced from the evidence that if the petitioner's nomination papers had been accepted by the Returning Officer he would surely have withdrawn his candidature in favour of the official congress candidate the respondent No. 4. If the petitioner had filed his nomination papers as an independent candidate and not as a congress candidate then the entire aspect of the case would have been changed and then it may not have been possible for the respondent No. 1 to rebut the presumption. We may also add that from the above facts as they appear in the evidence on the record, we cannot come to the conclusion that the result of the election has been materially affected by the improper rejection of the petitioner's nomination papers. Therefore after giving our most careful consideration to the provisions of section 100(1)(c) of the Representation of the People Act, 1951 and the judgments of the various Tribunals and the evidence on the record in this case, we are of the opinion that the result of the election in this case has not been materially affected by the improper rejection of the petitioner's nomination papers and answer this issue accordingly.

Therefore our findings on the issues raised in this case are as follows:—

Issue No. 1.—First part in Negative—Second part in Affirmative.

Issue No. 2.—In Negative.

Issue No. 3.—Petition dismissed with no order as to costs.

ORDER

The result, therefore, of our findings on the above issues is that the petition is dismissed. Taking the facts and all the circumstances of this case into consideration, we order that each party should bear his own costs.

M. P. ASTHANA, *Chairman*.

M. C. BHANDARI, *Member*.

GOVERDHANDAS T. GAJRIA, *Member*.

Judgment pronounced, signed and dated in open Court. Dated this day the 15th January, 1953.

M. P. ASTHANA, *Chairman*,

Election Tribunal, Rajasthan, Bikaner

[No. 19/226/52-Elec. III.]

S.R.O. 166.—WHEREAS election of Shri Mohammad Nasir, as a member of the Legislative Assembly of the State of Uttar Pradesh from the Tanda Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Devi Prasad, son of Shri Jang Bahadur, Village Chintaura, Pargana Tehsil and P.O. Tanda, District Faizabad;

AND WHEREAS, the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal,

BEFORE THE ELECTION TRIBUNAL AT GORAKHPUR.

PRESENT:

Sri Brij Narain, *Chairman*.

Sri Brij Behari Lal and

Sri Sukhdeo Prasad—*Members*.

ELECTION PETITION No. 269 OF 1952

Sri Debi Prasad—*Petitioner.**Versus*

1. Sri Mohammad Naseer
2. Sri Ram Sumer
3. Sri Badal Ram
4. Sri Nohhai Ram
5. Sri Chet Ram
6. Sri Sheoshankar
7. Sri Badri
8. Sri Vakiluddin
9. Sri Ramnath Sanghlo
10. Sri Anjani Kumar
11. Sri Devi Prasad
12. Sri Mukhtar Ahmad
13. Sri Raj Kishore Singh
14. Sri Ram Achaiber
15. Sri Shamsher Bahadur

Respondents.

JUDGMENT

This is an election petition under section 81 of the Representation of the People Act 1951 (Hereinafter to be called the Act) on behalf of Debi Prasad son of Sri Jang Bahadur to have the election of the respondent No. 1 set aside on the grounds that the respondent No. 1 did not appoint his election agent in accordance with the provisions laid down in section 4 of the Representation of the People Act and he himself and through his agents and workers hired and procured vehicles for the conveyance of electors to the polling station and back to their places and the respondent No. 1 issued circulars and posters which did not bear on their face the names and addresses of the printers and publishers and this respondent had been guilty of corrupt and illegal practices which have been detailed in para 3 of the Petition. The return of election expenses lodged by the respondent No. 1 as well as the declaration made by him verifying the said return is alleged to be false in material particulars and that fresh poll was illegally ordered at the polling station Miranpur without proper notification of the date and time of repoll on the representation of the respondent No. 1 who alleged that the slides of the ballot boxes used at booth No. 1 of the said polling station were found open. It has further been alleged that the mandatory provisions of rule 46(v) of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951, were contravened as the ballot papers of the petitioner as well as those of respondent No. 11 were counted together simultaneously in the same room and on the same table and a number of irregularities mentioned in clauses (a) to (f) in para 8 of the Petition were committed in counting. According to the Petitioner the result of the election was materially affected by the improper acceptance of votes in favour of the respondent No. 1 and so the petitioner has prayed that the election of the respondent No. 1 be declared to be void and he be declared to have been duly elected from the seat reserved for scheduled castes in Tanda Constituency, District Faizabad, about which election was held on 31st January, 1952 and 11th February, 1952, and the result of this election was published in the U.P. Gazette dated 26th February, 1952 and the return of election expenses was submitted by the respondent No. 1 on 3rd May, 1952.

The respondent No. 1 has filed his written statement challenging the allegations of the petitioner on various grounds but the other respondents have not contested this case. The respondent No. 1 contended that the petition is time-barred and it is legally not maintainable in its present form as proper details required by law have not been given as the names of those persons on whom undue influence and intimidation are alleged to have been exercised or who were the victims of alleged corrupt practices have not been given nor has the manner in which the corrupt practices, undue influence and intimidation been mentioned. It has further been contended that the particulars and facts mentioned in the list of particulars filed by the petitioner along with the election petition have not been duly and properly verified and so they cannot be legally looked into and considered by the Tribunal as their subsequent verification was not within time. According to this respondent he was duly nominated and he had appointed himself as his election agent and there was no irregularity in either his nomination or return of election expenses nor in the re-poll at Miranpur polling station. This

respondent has denied having committed any corrupt or illegal practice during the course of this election and it has been contended by him that the petition is liable to be dismissed with costs

The following Issues were framed on the pleadings of the parties:—

ISSUES

1. Whether the petition is duly presented and is in proper form, on proper grounds and is it properly verified?
2. Whether the petitioner was a duly nominated candidate and has a right to file the petition? Can the respondent No. 1 challenge the Petition on this ground without filing a recriminatory petition?
3. Whether the petition is maintainable?
4. Whether the petition is barred by time?
5. Whether the lists of particulars were given by the petitioner duly verified as required by law? If so, have they been verified in time? If not, its effect? Is the petition liable to be dismissed on this ground and can the facts mentioned in the particulars be looked into?
6. Whether the petitioner has furnished the details of particulars of corrupt and illegal practice as required by law, and whether the particulars given by the petitioner are vague and misleading? If so, its effect?
7. Whether the nomination of the respondent No. 1 was invalid in as much as he failed to give a separate declaration about the appointment of election agent as alleged in para. 9 clause (i) of the Petition? Whether any such declaration was necessary in law?
8. Whether the respondent No. 1 himself or through his agents and workers hired and procured vehicles for the conveyance of voters as alleged in para. 9 clause (ii) and part I of the list of the particulars of the petition?
9. Whether the respondent No. 1 himself or through his agents and workers committed undue influence, threat and intimidation on the voters as alleged in para. 9 clause (iii) sub-clauses (a), (b), (c) and (d) of the petition?
10. Whether Bhagwati Din Varma went on fast unto death, and if so, did his fast amount to undue influence on the voters?
11. Whether the photograph of Mahatma Gandhi constitutes a national symbol and if so, how does its publication and printing affect the result of election?
12. Whether the return of election expenses lodged by the respondent No. 1 as well as the declaration made by him verifying the said return is false, incorrect and inconsistent in material particulars as alleged in para. 9 clause (v) and part (ii) of the list of particulars? If so, its effect?
13. Whether the circulars and posters mentioned in paras. 4, 6, 8, and 9 of the list of particulars, part (ii) of the petition, were got issued by the respondent No. 1? If so, did the said posters and circulars contain the defects alleged in para. 9 clause (vi) of the petition? If so, its effect?
14. Whether the repolling at Miranpur was illegal for reasons given in para. 9 clause (vii) sub-clauses (a) to (g) of the petition?
15. Whether the repolling in Miranpur was not done according to law and instructions? If so, its effect on the election?
16. Whether all or any of the illegalities and irregularities mentioned above, alleged against the respondent No. 1, affected the result of the election materially? If so, how does this effect the decision of the petition?
17. Whether the Returning Officer of the constituency failed to adopt the procedure prescribed by Law in counting the votes as alleged in para. 9 clause (viii) of the petition?
18. To what relief, if any, is the petitioner entitled?

FINDINGS

Issues Nos. 1, 5 & 6.

The parties have first advanced arguments on legal issues Nos. 1 to 7 and so we proceed to give findings on these legal issues. The issues Nos. 1 and 5 have been taken up together because the points involved in them can be conveniently taken up together.

The election petition filed by Sri Debi Prasad petitioner was presented by him before the Election Commission on the 6th May, 1952 and the endorsement of the Secretary, Election Commission, dated 16th May, 1952, shows that the petition was duly presented by Sri Debi Prasad and there

appears to be valid objection as against the presentation of this petition before the Election Tribunal. The election petition is duly verified and as it was presented within limitation it cannot be deemed to be defective on this ground either. The form of the petition also does not appear to be defective as all the material facts have been properly arranged and in fact some of the details which should have been given in the list contemplated by sub-section (ii) of sec. 83 have also been given in the petition. This defect, however, would not be fatal. The main question which is to be determined at this stage is whether the list required by sub-section (2) of sec. 83 was duly filed by the petitioner in this case or not. The petitioner filed the list of particulars along with the petition and this list consisted of three parts, I, II & III, in which some details of corrupt and illegal practices alleged to have been committed by the respondent No. 1 & his agents have been mentioned by these lists were not verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

Section 83 of the Representation of the People Act, 1951 runs as follows:—

1. An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

2. The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice.

3. The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of a fair and effectual trial of the petition.

The petitioner in this case submitted his lists along with the petition on the 16th May 1952 but these lists were not duly verified as they should have been under sec. 83 (2) of the Act. The petitioner sent an application to the Election Commission on the 2nd July 1952 and along with this application he resubmitted the lists with necessary verification on each page and details of para. 9 (iii), (a) and (b) given on page 6 were given in part IV of the particulars submitted with this application. We have already pointed out above that the result of this election was published in the U P. Gazette under sec. 67 of the Representation of the People Act on the 26th February 1952 and even if the petitioner be given 60 days limitation as mentioned in rule 119 (ii) of the Representation of the People (Conduct of Election and Election Petitions) rules 1951, proper and valid petition along with necessary list should have been filed in Court by the 12th June 1952; but the petitioner submitted the verified list in parts I to IV on the 2nd July 1952, which clearly means that no verified lists relating to alleged corrupt and illegal practices were submitted within time.

The provisions of Sec. 83 (2) of the Representation of People Act, 1951 clearly show that an election petition to be valid should be accompanied by a list signed and verified as mentioned above and if the mandatory provisions of sub-section (2) of sec. 83 are not complied with, the result would be that the election petition itself would not be deemed to be according to law and it would not be deemed to be a proper election petition as contemplated by sec. 80 of the Representation of the People Act which clearly lays down that no election shall be called in question except by an election petition presented in accordance with the provisions of part VI of the Act. The learned counsel for the petitioner has urged that as details of corrupt and illegal practices were mentioned in the petition itself and as the question of verification of the list is only a matter of procedure this Tribunal should allow the petitioner to verify the lists which were filed along with the petition within time at this stage and reliance has been placed on Mohammad Shafi Vs. Mohammad Iqbal Ahmad Khan reported at page 970 in Sen and Potdars Indian Election Cases. Reliance has also been placed on Sved Mohammad Shah Vs. Khwaja Ghulam Samad and others (Sen and Potdars Indian Election Cases, p. 975), K. B. Shah Mohammad Yahya Vs. Chaudhari Mohd. Nazirul Hasan (Sen & Potdars Indian Election Cases, p. 549) and Daveswar Verma Vs. Deoraj Sethi (Sen and Potdars Indian Election Cases, p. 504) in order to show that the Election Tribunal is not precluded from considering objections as to non-compliance with rules or irregularities relating to the return of election expenses and also relating to

particulars even if they are not set forth in the list of particulars. All these cases had been decided prior to the coming in force of the Representation of the People Act, 1951. It has been contended that under rules 7 to 9 of the Punjab Assembly Electoral Rules 1936 it was necessary for the petitioner to submit a list duly signed and verified setting forth particulars of any corrupt practice which the petitioner alleged. At page 519 in Daveswar Varma's case it has been observed:—

"It is clear from the perusal of the rules 7 to 9 that a statement in concise form of the material facts on which the petitioner relies should be contained in the petition, that the petition must be accompanied by a list setting forth full particulars, but these particulars must be confined to corrupt practices which the petitioner alleged in the petition. As the Commissioners have been given a discretion to allow amendment of the particulars included in the said list and may order that further and better particulars be furnished, they have no power to allow an amendment of the petition so as to include a new charge not already included therein. This means that where a certain corrupt practice is alleged in the petition but the rule is not complied with, so far as the particulars thereof are concerned, the same will be struck off and similarly if particulars are given of a corrupt practice which is not alleged in the petition, those particulars will be struck off and shall not form the subject of an issue."

It thus becomes clear that even under the old law if the particulars of a corrupt practice alleged in the petition were not given in the list the allegation regarding the commission of such corrupt practice in the petition was to be ignored and so the argument advanced on behalf of the present petitioner that the allegations regarding commission of corrupt practices by the respondent No. 1 contained in the petition should be deemed to be sufficient is absolutely without force. We have already mentioned above that under sec. 20 of the Representation of the People Act no election can be called in question except by an election petition which fully satisfied the requirements of part VI of the Act, viz. of sections 81 to 84 of the Act. The question whether the petitioner should be allowed to verify the lists which had been filed by him along with the petition now is not free from difficulty. The learned counsel for the petitioner has urged that as verification is a matter of procedure this Tribunal should exercise its powers under sub-section (3) of sec. 83 of the Representation of the People Act and reliance has been placed in this connection on A.I.R. 1927 Allahabad, p. 514 (Bombay Baroda and Central India Railway Company Ltd. Vs. Sijli Mills Company Ltd., Baroda) in which it has been laid down that any irregularity in the signature of verification of plaint is a mere defect of procedure and cannot be fatal in second appeal when the merits of the case have not been affected. Reliance has also been placed on A.I.R. 1925 Allahabad, p. 79 (Shivdeo Misra and others Vs. Ram Prasad and others) in which it has been held that a plaint is not a void plaint merely because it does not contain the verification clause as required by the Code of Civil Procedure. The omission to verify it is a mere irregularity which could be cured even at a late stage and such a plaint, therefore, is deemed as presented on the date of actual presentation and not on the date of its verification. Merely on the ground of such a defect the plaint cannot be treated as altogether invalid and the subsequent verification is not an amendment of the plaint. There is no doubt that the question of verification is a matter of procedure and it is governed by the provisions of the Code of Civil Procedure even in election cases—vide sec. 90 sub-section (2) of the Representation of the People Act. But in the present case the question which is involved is whether the petitioner should be allowed to verify the list even though the period of limitation for bringing a regular petition expired long ago. If the lists filed with the petition be ignored for want of verification the petition itself would be defective and it would not be deemed to be a proper and valid election petition within the meaning of sec. 80 of the Representation of the People Act, 1951. But if the petitioner is allowed to verify the lists at this stage and the verification is to take effect from the date on which these lists were presented before the Election Commission it would amount to allowing the petitioner to file a fresh petition against the respondents at this stage, i.e., long after the expiry of the period of limitation. It has been laid down in A.I.R. 1950 Bombay, p. 130 (Prince Line Ltd. Vs. the Trustees of the Port of Bombay) that unless and until a plaint is presented to the Court complying with the provisions contained in Order VI, Rule 14 and Order VI, Rule 15 C.P.C., it cannot be said that a proper plaint is presented to the Court and unless such a proper plaint is presented to the Court, it cannot be said that the suit has been instituted in the Court by a party. The Court has always got the discretion, if a plaint is not properly presented or is not signed and verified in accordance with the provisions of Order VI, Rule 14 and Order VI, Rule 15, to allow the plaintiff to remedy the defect at a

later stage even though the period of limitation may already have expired. But that is a matter of the discretion of the Court which the Court exercises after due consideration of all the facts and circumstances of the case before it. If after a due deliberation of all these facts, the Court comes to the conclusion that it is just, that in the exercise of its discretion, it should allow the defect to be cured, it can do so irrespective of the fact that the defendant has vested in him by that time a right to plead the bar of limitation. But where while granting the amendment or an opportunity to the plaintiff to cure the defect, the Court reserves unto the defendant the right to plead the bar of limitation, the defendant would not be deprived of its right to plead the bar of limitation and the plaintiff would have to meet that point when properly raised by the defendant by subsequent state—*vide* also A.I.R. 1922 Bombay, page 113.

I have already pointed out above that even under the old law the petitioner was bound to give the list as contemplated by sub-section (2) of section 83 of the Representation of the People Act, 1951 and so the applicant in this case must be deemed to be negligent in not filing duly verified lists along with this petition within the period of limitation. The law of election requires the fulfilment of technicalities to some extent rigidly because in election cases the parties have to deal with matters which take place during the period from the date of publication of notice upto the filing of the return of election expenses and so there is absolutely no justification for a petitioner in being negligent in not mentioning necessary details in his petition. In ordinary civil suits litigants have to deal with matters which sometimes take place decades back and so amendments are generally allowed in plaints. Again, in ordinary civil suits litigants are sometimes illiterate and so they are not expected to know the requirements of law with the result that amendments sometimes become necessary. But in election cases candidates generally get help from legal advisers from the very beginning and so there seems to be no justification in their being negligent to such an extent as not file verified lists along with the petition in conformity with the mandatory provisions of Section 83(2) of the Representation of the People Act. As the present petitioner did not file the lists which he was required to file under Section 83(2) of the Representation of the People Act within the prescribed period of limitation, we think he should not be allowed now to verify the lists at this stage. The subsequent verified lists filed by him were filed beyond the period of limitation and so they cannot be considered in the present case. The result is that there is no proper and valid election petition before us within the meaning of Section 80 of the Representation of the People Act in which any relief can be granted to the present petitioner. We hold that the petitioner failed to furnish the details of particulars of corrupt and illegal practices by means of a list as required by section 83, sub-section (2) of the Representation of the People Act within the period of limitation and as verification cannot be allowed at this stage, the present petition is liable to be dismissed on this ground even though the petition itself is properly verified. We decide these Issues accordingly against the petitioner.

Issue No. 4.

We have already shown above that the petition dated 16th May, 1952 did not contain any list as required by sub-sec. (2) of Section 83 of the Representation of the People Act and so there was no complete and proper election petition before the Election Commission within the prescribed period of limitation. We have already mentioned above that the present petitioner could not have been allowed to verify the lists accompanying the petition at this stage even under the provisions of the Code of Civil Procedure in view of the ruling reported in A.I.R., 1950 Bombay, p. 130, and so the present petition must be held to be barred by time even if the petitioner is allowed 60 days period of limitation under rule 119(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. We, therefore, decide this Issue against the petitioner.

Issue No. 3.

We have shown above that the present petition is not in accordance with the provisions of section 83 (2) of the Representation of the People Act and as such, it cannot be deemed to be a valid petition within the meaning of Section 80 of the Representation of the People Act, 1951. The provisions of Sec. 83 are mandatory as has been held in *Pritam Singh Vs. Hon'ble Sri Charan Singh*, reported in U.P. Gazette (Extraordinary dated 26th December, 1952) and so we hold that the present petition is legally not maintainable. The Issue is decided in the affirmative.

No other Issue need be determined in view of our findings given above. The petition, therefore, fails.

The election petition brought by Sri Debi Prasad, therefore, falls and it is hereby dismissed. The petitioner will have to pay Rs. 100 as costs to the respondent No. 1. The remaining respondents will neither pay nor receive any costs.

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| 1. (Sd.) B. B. LAL | } Members. |
| 2. (Sd.) SUKHDEO PRASAD | |

(Sd.) BRIJ NARAIN, *Chairman.*

The 13th January, 1953.

[No. 19/269/52-Elec.III.]

P. S. SUBRAMANIAN

Officer on Special Duty.